

# THE SILENT FALL OF THE ELDERLY AT THE NEW INSURANCE LEGISLATION

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- **ABSTRACT:** Brazil's aging population presents legal challenges in regulating life and personal integrity insurance, particularly regarding contractual continuity. Law No. 15.040/2024, by requiring formal criteria for non-renewal, may produce exclusionary effects on elderly consumers. This article examines whether Article 124 complies with the duties of transparency, loyalty, and teleological consistency derived from the principle of objective good faith. The study is justified by the need to assess whether formally neutral clauses produce indirectly discriminatory outcomes. A dogmatic-analytical methodology is employed, grounded in national legislation, human rights treaties, and Brazilian case law. The first section discusses ageism in insurance relationships; the second applies normative good faith to test the provision examined. The paper concludes that, despite formal coherence, there are no effective protection mechanisms in the rule, and it must be interpreted in accordance with constitutional principles. Legislative reforms introducing individualized evaluation of contractual continuity seem to be necessary.
- **KEYWORDS:** Objective good faith; Law No. 15.040/2024; elderly consumer.

## A QUEDA SILENCIOSA DOS IDOSOS NA NOVA LEGISLAÇÃO SECURITÁRIA

- **RESUMO:** O envelhecimento populacional brasileiro impõe desafios à regulação jurídica dos contratos de seguro de vida e integridade física, especialmente quanto à sua renovação em contextos de vulnerabilidade. A Lei nº 15.040/2024,



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enquanto condiciona a recusa de renovação a critérios formais, pode gerar exclusões contratuais indiretas. Este artigo analisa a compatibilidade do art. 124 da referida lei com os deveres de transparência, lealdade e consistência finalística derivados da boa-fé objetiva. Justifica-se a investigação pela necessidade de aferir se cláusulas formalmente neutras produzem efeitos discriminatórios. A metodologia é dogmático-analítica, com base em legislação nacional, jurisprudência e doutrina. A seção inicial aborda o etarismo nas relações securitárias; a seguinte aplica os elementos da boa-fé objetiva à norma. Conclui-se que a regra, embora bem-intencionada, carece de mecanismos protetivos eficazes e demanda interpretação conforme à Constituição, além de reformas legislativas que incorporem meios de avaliação individualizada.

■ **PALAVRAS-CHAVE:** Boa-fé objetiva; Lei nº 15.040/2024; consumidor idoso.

## 1. Introduction

Profound transformations in economic, social, and legal dynamics are being triggered by the accelerated aging of Brazil's population, thereby demanding new normative approaches in sectors that directly affect the life cycle. Among these sectors, the private insurance market – particularly life and personal injury insurance contracts – is highlighted, as its actuarial structure frequently employs chronological age as a parameter for risk assessment, pricing, and eligibility. Although such reliance on age can be technically justified under certain actuarial premises, this reality calls for careful legal scrutiny regarding the limits of age differentiation and the risk of indirect discriminatory practices, especially in light of the structural vulnerability that characterizes a significant portion of the elderly population.

In this context, Law No. 15.040/2024 has established a normative milestone for private insurance in Brazil by introducing highly specific rules on contractual non-renewal. While these provisions do not expressly reference either age or aging, they impose implicit formal barriers that may disproportionately impact policyholders undergoing the aging process, thereby raising the hypothesis of non-conformity with the duties of conduct derived from objective good faith – the hermeneutic foundation of Brazil's contractual framework (Pompeu; Pereira, 2025).



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The legal issue addressed in this study resides in the tension between economic freedom and contractual protection, particularly within the context of renewing long-term insurance contracts involving elderly individuals. Article 124 of Law No. 15.040/2024 establishes specific grounds for insurers to refuse renewal. Although the provision omits an explicit age-based criterion, the requirements it sets – such as successive and automatic renewal for more than ten years – are capable of producing disproportionate effects on consumers who are advancing in age. Accordingly, this study poses the following research question: does Article 124 of Law No. 15.040/2024 ensure effective contractual protection for elderly policyholders in conformity with the duties imposed by objective good faith?

The general objective of this study consists of analyzing the compatibility of Article 124 of Law No. 15.040/2024 with the duties attached to the objective-good-faith clause in contractual relations, with emphasis on the justification required for non-renewal, the protection of legitimate expectations and the continuity of insurance relationships established with elderly consumers. The investigation seeks to determine whether the provision permits contractual practices that, while formally neutral, result in the exclusion of policyholders situated in age-related vulnerability.

The rationale for this research is grounded in the growing demand for normative and hermeneutic instruments capable of safeguarding vulnerable consumers in sectors marked by economic rationality and informational asymmetry. Investigation into the protective efficacy of Article 124 through the lens of objective good faith provides theoretical and technical subsidies for assessing the limits of bargaining freedom in regulated markets. From an academic standpoint, the study advances discussions on aging, insurance contracts, and duties of conduct within consumer relations.

To achieve these objectives, the article is structured into two sections. The first section presents the concept of ageism in social and economic structures – emphasizing its manifestations in consumer relations and life-insurance contracts – and then describes the technical content of Article 124 of Law No. 15.040/2024, analyzing its premises and potential exclusionary effects on elderly policyholders. The second section examines the legal foundations of objective good faith and its application as a hermeneutic standard for normative control, proceeding to an evaluation of the provision with respect to requirements of justification, continuity, and protection of legitimate expectations in insurance relationships.



Methodologically, the research adopts a qualitative, dogmatic-analytical approach guided by systematic interpretation of the Federal Constitution, infraconstitutional legislation, and jurisprudence. Normative and empirical sources include Law No. 15.040/2024, the Brazilian Consumer Protection Code, the Federal Constitution, as well as decisions of the Superior Court of Justice and specialized doctrine.

In conclusion, it is argued that, despite aiming to regulate the non-renewal of long-term insurance contracts, Article 124 of Law No. 15.040/2024 does not provide sufficient mechanisms to prevent exclusionary contractual practices. The absence of a requirement for individualized actuarial justification and the adoption of rigid eligibility criteria undermine the protection of elderly consumers' legitimate expectations. Finally, it is maintained that the interpretation of the provision must be guided by the duties deriving from objective good faith and by constitutional principles safeguarding vulnerable parties in contractual settings (Pompeu; Pereira, 2025).

## 2. Ageism in Insurance Relations: Normative and Structural Aspects

As life insurance contracts become ever more prevalent instruments of patrimonial and personal protection in societies experiencing rising life expectancy, it becomes indispensable to examine how legal frameworks address aging – particularly in the face of age-based discrimination. It must be recognized that old age constitutes an indispensable variable in the actuarial calculation that structures the link between contingency, risk, insurance coverage, and the relationship between rights and contractual sustainability (Luccas Filho, 2011, p. 2-3). Consequently, the manner in which the Brazilian legal order qualifies and regulates this variable can directly affect the inclusion of elderly persons in the insurance market and the balance between contractual protection and economic viability.

Within the Brazilian legal system, ageism encounters normative barriers whose solidity remains incipient, especially regarding long-term contracts and the criteria governing their renewal. In this context, Article 124 of Law No. 15.040/2024, by establishing specific conditions for the continuation of life and personal injury insurance contracts after a decade of validity – particularly when referring to persons aged 60 or above – introduces restrictions whose legal legitimacy demands thorough examination. Indeed, such limits give rise to questions not only concerning the internal



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coherence of the provision but, above all, regarding its consonance with supralegal<sup>1</sup> Human Rights and with the constitutional principles of equality and prohibition of discrimination. Traversing these paths, this section endeavors to investigate the normative sufficiency of the legal provision in question, considering the duties derived from objective good faith in contractual relations – especially as to the justification for refusal, protection of legitimate expectations, and contractual continuity in contexts of age-related vulnerability.

To fulfill this purpose, a legal-analytical methodology is adopted, grounded in national and international anti-discrimination legislation, decisions of the Supremo Tribunal de Justiça [Superior Court of Justice (STJ)], and doctrinal foundations. The argumentative trajectory is divided into three interdependent segments. First, the concept of ageism and its manifestations across different social fields will be delineated, with an emphasis on consumer contracts. Second, the normative content of Article 124 of Law No. 15.040/2024 will be presented, accompanied by a technical description of the provision and an analysis of its formal criteria. Third, the investigation will evaluate the effects of the provision on consumers who, although situated in age-related vulnerability, fail to meet the temporal requirements imposed –examining whether such criteria harmonize with the duties of loyalty, protection of legitimate expectations, and contractual continuity prescribed by objective good faith. From these premises, the aim is to foster critical reflection on the limits of current legal protection and the need to revise the approaches employed to curb ageism in life and personal injury insurance contracts.

1 In the judgment of Extraordinary Appeal No. 466.343/SP, rendered on December 3, 2008, the Supremo Tribunal Federal [Supreme Federal Court (STF)] consolidated the understanding that international human-rights treaties enjoy supra legal status. Under this doctrine, such treaties are conferred a normative hierarchy superior to that of ordinary legislation yet remain subordinate to the Federal Constitution. It should be noted that supralegal status does not entail the express repeal of incompatible infraconstitutional norms, but rather the suspension of their efficacy—thereby precluding their application by judicial and administrative bodies and producing paralyzing effects. By contrast, treaties that observe the qualified procedure set forth in § 3 of Article 5 of the Federal Constitution—namely, approval in two rounds by both Houses of the National Congress, with a three-fifths quorum—are incorporated into the domestic legal order with the status of constitutional norms. To date, only three instruments have been elevated to the block of constitutionality via the Article 5, § 3 procedure: (1) the 2007 Convention on the Rights of Persons with Disabilities, approved by Legislative Decree No. 186 of July 9, 2008, and promulgated by Decree No. 6 949 of August 25, 2009; (2) the 2013 Marrakesh Treaty, approved by Legislative Decree No. 261 of December 7, 2015, and promulgated by Decree No. 9 522 of October 8, 2018; and (3) the 2013 Inter-American Convention against Racism, approved by Legislative Decree No. 1 of May 17, 2021, and promulgated by Decree No. 10 932 of January 10, 2022. Consequently, these treaties form part of Brazil's block of constitutionality, equating – normatively – to other constitutional provisions both for purposes of constitutional review and conventionality control (Sarlet, 2013, p. 406).

## 2.1 Ageism as a factor of structural inequality in insurance relations

Given the demographic reconfigurations and sociocultural mutations characterizing contemporary Brazil<sup>2</sup>, ageism emerges as an analytical category capable of unveiling normative devices and social practices that operate structural inequalities based on chronological age (Goldani, 2010; Pereira; Hanashiro, 2014). Specialized literature traces its origin to Robert Butler's formulations in the 1960s when linked to discriminatory conduct directed at older persons (Goldani, 2010). However, the contemporary notion of ageism incorporates institutionalized forms of discrimination manifesting in state regulations as well as political, administrative, and cultural dynamics – resulting in undue limitation of access to fundamental rights by age-based criteria (Butler, 1980).

Under the aegis of multilateral commitments assumed internationally, the institutional dimension of ageism must be apprehended as a regulatory entanglement composed of statutory provisions, technical decisions, and operational guidelines that erect undue barriers solely based on chronological age (World Health Organization, 2021). Accordingly, within the universal Human Rights<sup>3</sup> system – whose efficacy is fully ratified in Brazilian constitutionalism – such discriminatory manifestations have already been deemed legally inadmissible, particularly in light of obligations arising from treaties for the protection of fundamental rights assumed by Member States.

Advancing this normative understanding, the Office of the UN High Commissioner for Human Rights (OHCHR, 2012) emphasizes that overcoming age-based discriminatory practices requires the formulation of inclusive public policies and the

2 According to Mendonça (2025), Brazil's demographic aging – as evidenced by a 57.4% increase in the elderly cohort over a twelve-year period (IBGE Demographic Census, 2022) – underscores the necessity of enhancing public policies and adaptation strategies. She further observes that, in 2024, despite the creation of approximately 1.7 million jobs – equivalent to a 16.5% growth relative to 2023 – the absorption of this new workforce was overwhelmingly concentrated among individuals aged up to 24 years, who accounted for 90% of all vacancies. Concurrently, some 160,000 positions formerly held by persons over 50 years of age were eliminated. This conjuncture has fostered a rise in the number of elderly persons who are unemployed and without access to pensions, a phenomenon exacerbated by recent pension reforms and age discrimination in the labor market. In conclusion, Mendonça warns of a potential social collapse characterized by the impoverishment of the elderly and emphasizes the urgency of formulating and implementing public policies aimed at promoting labor inclusion and safeguarding dignity in old age.

3 In the course of the historical internationalization of Human Rights, a dual normative protection structure has been consolidated, comprising a global system under the aegis of the United Nations and a regional system encompassing the jurisdictions of the Inter-American, European, and African Human Rights Courts (Moreira, 2015, p. 62).



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incorporation, into domestic legal orders, of specific accountability measures. Such measures must be in strict harmony with the principle of equality and with international Human Rights commitments to ensure the legal efficacy of rights enshrined in multilateral treaties ratified by Brazil.

In contrast to this path, ageism is configured not only as a relational manifestation of discriminatory character but, in more complex dimensions, as a structured mechanism embedded within the institutional<sup>4</sup> regimes of various social sectors (Fukuyama, 2015, p. 55-57). Such institutional embedding was evidenced by the World Health Organization's 2021 global report on ageism, which observes that age-based discrimination produces concrete impacts on educational, labor, and care opportunities – thereby rendering the full exercise of fundamental rights by aging populations unfeasible (World Health Organization, 2021). Particularly within the domain of consumer relations, this practice can reinforce inequalities and compound vulnerabilities, materializing in restrictions on access to goods and services determined by age-based criteria devoid of adequacy, necessity, and proportionality.

Understanding ageism requires recognizing that its effects are not confined to the symbolic or cultural sphere, as they concretely interfere with the realization of social and economic rights across the life course. It thereby follows that associating age with negative stereotypes and the devaluation of accumulated experience – *i.e.*, age discrimination – tends to legitimize institutional practices that systematically restrict access to essential domains of life, such as social protection and consumption. These practices disproportionately affect individuals in more advanced stages of life or experiencing intersectional vulnerabilities, particularly within asymmetrical contractual contexts such as insurance (Freitas; Queiroz; Sousa, 2010; Pereira *et al.*, 2014).

As Arendt (2010) warns, human dignity is realized insofar as the possibility of action and public participation is guaranteed – a possibility that is frequently constrained in societies attributing lesser value to old age. Moreover, as Wanderley (2002) observes, aging tends to coincide with other forms of exclusion, such as prolonged unemployment and the absence of community ties – phenomena that exemplify the barriers to the exercise of a dignified life. Thus, ageism naturalizes the segregation of

4 “Institutions,” as defined by Fukuyama (2015, p. 55-57), denote a stable, recurring, and structured ensemble of behavioral rules that guide human conduct and establish expectations regarding others' behavior in specific circumstances. Accordingly, institutions comprise both formal and informal structures that regulate human behavior and ensure the long-term governance of society.



individuals based solely on their chronological age, which undermines the democratic commitment to inclusion and justifies its critical examination in light of legal and normative standards.

In the heart of consumer relations, ageism manifests itself as a particularly sensitive institutional configuration within the insurance sector, where chronological age functions as a technical element of actuarial calculation<sup>5</sup>, risk assessment, and the principle of mutuality. Although risk constitutes the core variable in insurance contracts, the manner in which insurers economically manipulate this factor – above all through age-band rating adjustments – may result in discriminatory practices that clash with the normative foundations of the Brazilian legal order (Nunes; Ribeiro, 2006), justified by projections of elevated claim frequency due to aging. This contractual distortion acquires even greater relevance in light of empirical evidence that insurers, according to the Comunidade de Profissionais de Seguros (Community of Insurance Professionals [2023]), frequently advance technical justifications that are contradictory or entirely devoid of any exercise of the duty to inform.

However, this dynamic is not confined to the pre-contractual phase – as it impedes older individuals' entry into the insurance system during risk-data collection – but may also arise during the execution and termination of long-term contracts, circumstances that undermine maintenance under objective good faith and diminish the effectiveness of applicable constitutional objectives<sup>6</sup>. Moreover, social practices and symbolic representations converge to implicitly legitimize keeping elderly persons

<sup>5</sup> It is asserted by Petersen (2018, p. 110) that the analysis of a policyholder's personal data is of paramount importance for the accurate measurement of the risk to be insured. An intrinsic relationship exists between personal data and the covered risk insofar as the set of the policyholder's subjective and behavioral characteristics (e.g., sex, age, occupation, address, health status, smoking habits) constitute factors that affect the magnitude of risk and thus alter the probability of claim occurrence. Accordingly, policyholder data analysis is fundamental to structuring the contract's economic basis, influencing both premium calculation and risk selection. Such analysis provides the insurer with the information necessary for the underwriting decision and the precise delineation of contractual terms, thereby defining the scope of covered risks.

<sup>6</sup> Sarlet (2018, p. 246) establishes a tripartite distinction among efficacy, applicability, and effectiveness – demonstrating that a norm, although in force at the abstract level (efficacy) and amenable to practical application (applicability), may nonetheless fail to achieve its intended outcomes (effectiveness). Accordingly, contractual permission for the adoption of ageist practices in private insurance – particularly health plans – constitutes an erosion of fundamental constitutional objectives (effectiveness). First, it undermines the fundamental aims enshrined in Article 3 of the Brazilian Federal Constitution of 1988 – namely, building “a just and solidary society” (I) and one “free from prejudices such as age” (IV) – thereby compromising the attainment of the common good (III). Second, in the economic order, as set forth in Article 170 of the Brazilian Federal Constitution of 1988, it disregards the imperatives of social justice (*caput*), consumer protection (V), and reduction of socioeconomic inequalities (VII), effectively transforming old age – a stage inherent in the life cycle – into a factor of economic exclusion. Finally, it subverts the financial and insurance system's social function, as stipulated in Article 192 (*caput*) of the Brazilian Federal Constitution of 1988, whose operation must align with the collective interest.

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from accessing essential goods and services. Such a scenario even disregards the differentiated legal treatment guaranteed by Article 4, I, of the Consumer Protection Code, which, according to Lopes (2022, p. 87), must recognize age-related vulnerability as a normative category (Brasil, 1990).

In conclusion, age discrimination in insurance relations may be understood as a sectoral manifestation of the structural inequalities that permeate the macroeconomic and social order, challenging legal scholars to undertake an analysis anchored in the postulates of substantive equality, the prohibition of arbitrary discrimination, and the protection of human dignity at every stage of the life course. Accordingly, old age must be conceived as a plural stage of existence, one that manifests vulnerabilities that neither conform to rigid demarcations nor appear uniformly among individuals. Consequently, as the legal order seeks to address age-based exclusion within insurance relations, it becomes imperative to critically examine the extent to which legal provisions - such as Article 124 of Law No. 15.040/2024 - that adopt chronological references or pre-established temporal requirements may, even inadvertently, perpetuate structures of social inequality. The following section is therefore devoted to this inquiry, aiming to deepen the legal limits of age differentiation and to assess the degree to which Article 124 of Law No. 15.040/2024 can be reconciled with the principles of good faith, vulnerability protection, and the harmonization of interests enshrined in the Brazilian Consumer Protection Code.

## 2.2 Age as a technical and legal standard in insurance contracts

With the purpose of modernizing Brazil's private insurance legal regime, Law No. 15.040/2024 - sanctioned on 9 December 2024 and promulgated in the Diário Oficial da União on 10 December 2024 - constitutes an autonomous legislative inflection that reshapes the set of rules governing insurance contracts. Pursuant to its Article 136, a *vacatio legis* of 365 days precedes its entry into force on 10 December 2025 (Brasil, 2024). As Pasqualotto (2020) situates this legislative overhaul within a trajectory of protracted lawmaking endeavors, it was designed to supplant the fragmented framework hitherto anchored in Decree-Law No. 73/1966 and the Civil Code's general contract provisions - thereby realigning Brazil's insurance regulatory architecture with contemporary market demands and actuarial advancements.



Within this reconfigured regime, Article 124 outlines specific normative prerequisites delimiting insurers' power to refuse renewal of individual life and personal injury policies. For didactic clarity, the provision is rendered below (unofficial translation):

Article 124. Unless the insurer ceases operations in the relevant line or modality, any refusal to renew individual life and personal injury insurance policies that have been successively and automatically renewed for more than ten (10) years shall be preceded by notification to the policyholder and accompanied by an offer of another policy providing similar coverage and premiums actuarially redetermined in light of portfolio experience and balance, at least ninety (90) days in advance - with waiting periods and exclusions for pre-existing conditions prohibited Brasil (2024).<sup>7</sup>

Pursuant to the provision, non-renewal at the insurer's initiative is *prohibited only* with respect to policies that have been maintained through successive automatic renewals for more than ten years - provided that at least 90 days prior notice is given and that an offer of replacement coverage with similar guarantees and actuarially adjusted premiums accompanies such notice, with waiting periods and preexisting-condition exclusions expressly forbidden (Brazil, 2024). Although the legislative intent appears aimed at reinforcing objective good faith and continuity of relations, the conditions imposed by Article 124 invite critical scrutiny as to their protective adequacy and the practical consequences for individuals who, despite equivalent vulnerability, fall marginally short of the ten-year temporal threshold fixed by the legislator.

The legislative innovation embodied in Article 124 centers on a legal framework that - while streamlining the administrative implementation of insurance coverage - may nevertheless obscure actual vulnerabilities. Specifically, the statute's combined conditions of (i) successive automatic renewals and (ii) a duration exceeding ten years - coupled with the absence of any individualized underwriting standards - serve to narrow its protective scope. Illustratively, a 65 years old policyholder whose life policy has been auto-renewed for nine years and eleven months falls just below the ten-year threshold and thus loses the intended protection. Such exclusion betrays an asymmetry between the declared purpose of preserving contractual continuity and

7 All legislative provisions cited herein are unofficial translations by the authors.



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the concrete effects produced by the legal formula. This tension demands a critical assessment of Article 124's consistency with the constitutional principles of substantive equality, objective good faith, and the social function of contracts, as enshrined in the 1988 Brazilian Federal Constitution and the Brazilian Consumer Defense Code (Brasil, 1988; Brasil 1990).

As Medeiros (2023, p. 153–154) contends, drawing a bright-line rule within a demographic distribution – as occurs under the Elderly Statute's sixty-year senior-eligibility threshold or the ten-year vesting requirement for protection against policy non-renewal – can serve to segregate insureds who share analogous life-cycle risk exposures and equivalent vulnerabilities. His statistical analysis demonstrates that membership in a given insured cohort neither eliminates its internal heterogeneity nor ensures parity with those immediately outside the cohort. Accordingly, extending statutory safeguards exclusively to “senior citizens” or “decennial policies” on the basis of a rigid numerical marker may paradoxically leave unprotected those who, despite falling just short of the threshold, suffer from the same structural fragilities – such as long-standing policyholder tenure, a demonstrated record of renewal loyalty, and the absence of alternative risk-transfer mechanisms. This insight underscores the need to recalibrate legal frameworks predicated on inflexible categories in favor of regimes that recognize the procedural and multidimensional character of vulnerability. Such recalibration is especially pertinent when the provision's purpose transcends mere administrative grouping – as with Article 124 of Law No. 15.040/2024 – to effectuate substantive equality and forestall abusive underwriting or non-renewal practices.

Against this backdrop, it must be acknowledged that an assessment of Article 124 of Law No. 15.040/2024 (Brasil, 2024) cannot be confined to a purely textualist interpretation of its statutory language. The legal scrutiny of this provision must integrate its operational effectiveness with the constitutional and legal obligations borne by the Brazilian State – especially regarding contractual safeguards in vulnerability contexts. In this light, the legislature's reliance on temporal and objective criteria – while streamlining administrative implementation – falls short when measured against the duty to secure effective protection for elderly or aging policyholders. Accordingly, the next section will assess whether the normative architecture crafted by the aforementioned provision aligns with the principles of objective good faith, the consumer-protection guarantees enshrined in the Brazilian Consumer Defense Code, and the prohibition of discriminatory exclusion. This analysis will focus on the dual pillars of the duty



of contractual continuity and the requirement of robust actuarial justification for any non-renewal decision, with the aim of gauging its conformity to constitutional and treaty-based parameters in force.

### 3. Objective good faith as an interpretive standard for normative review

The principle of objective good faith is a cornerstone of modern contract doctrine, designed to steer the parties' conduct towards standards of fairness, trust, and mutual loyalty. Operating as an external constraint on the exercise of contractual rights, this principle displaces the parties' subjective intent<sup>8</sup> – particularly in situations of structural inequality. As Azevedo (1992, p. 79–80) observes, objective good faith mandates duties that oblige the parties to uphold mutual trust, ensuring that contractual governance incorporates these obligations even in the absence of express provisions. Likewise, Delgado (2004, p. 169) notes that insurance contracts, given their technical-actuarial complexity and informational asymmetry, require an enhanced application of objective good faith to balance interests and prevent corporate practices that undermine the insured's legitimate expectations of coverage and contractual continuity.

Accordingly, to assess the constitutional validity of Article 124 of Law No. 15.040/2024, this chapter adopts a dogmatic-analytical methodology grounded in the principle of objective good faith as an interpretive standard for infra-constitutional review. It proceeds from the hypothesis that, by conditioning contract renewal on temporal benchmarks and actuarially adjusted premiums, the legislature must conform to the constitutional constraints on private autonomy – specifically the principles of substantive equality and the prohibition of indirect discrimination. Section 3.1 will outline the foundations of objective good faith as a structuring principle of the Brazilian contractual regime, examining its normative scope and its application to insurance relationships. Section 3.2 will then evaluate Article 124 in light of these foundations to determine whether its temporal and actuarial criteria satisfy the constitutional requirements of rationality, symmetry, and proportionality in the control of private practices.

<sup>8</sup> In this context, “subjective intent” denotes the contractual rights or entitlements conferred by the governing law upon one party – such as the right of rescission, policy renewal, amendment of policy terms, or coverage denial – provided that such prerogatives are expressly enumerated in the contract or mandated by statute.

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### 3.1 Good faith as a constraint on private autonomy in vulnerability contexts

In the development of modern contract law, the general clause of objective good faith has acquired substantial normative force, moving beyond its original subjective focus on the parties' internal will. As Azevedo (1992, p. 80) observes, this evolution was shaped significantly by § 242 of the German Civil Code (*Bürgerliches Gesetzbuch*, *BGB*)<sup>9</sup>, whose jurisprudential impact was decisive in Brazilian civil law doctrine. On this foundation, objective good faith operates as an autonomous normative injunction – steering party conduct and permitting the calibration of contractual consequences whenever structural imbalances or coercive practices arise.

Consequently, this doctrinal evolution has endowed the general principle of mutual trust with operative force: no longer confined to ethical or aspirational functions, it now serves as a robust normative mechanism for regulating obligational relationships – particularly where pronounced asymmetries of bargaining power exist between contracting parties. From this perspective, objective good faith functions as an essential constraint on private autonomy, guiding the formation, execution, and amendment of contracts in accordance with bona fide expectations and cooperative transaction practices. Moreover, Azevedo (1992, p. 80-81) observes that the shift from a subjective to an objective model imposes externally verifiable conduct standards that transcend mere volitional intent to encompass socially mandated behavior.

This theoretical shift is further elaborated by Martins-Costa (2000, p. 411-412), who asserts that the objective good faith clause establishes a normative standard of conduct that does not hinge on the contracting party's psychological dispositions but on shared ethical benchmarks – such as reasonableness, honesty, and probity – in contractual dealings. In a convergent vein, Couto e Silva (1977, p. 33) underscores that good faith imposes a proactive duty aimed at fostering mutual trust, legal certainty, and the stability of obligational ties. For these reasons, the principle assumes particular importance in regulated domains – such as the insurance sector – where consumer

9 Azevedo (1992, p. 80) explains that the German Civil Code – a foundational normative enactment of civil law – provides that “The debtor must perform the obligation in accordance with the requirements of good faith, taking into account established trade usages.” According to the author, §242 embodies the general clause of objective good faith in the German legal order, empowering interpreters to calibrate the literal effects of contractual provisions in light of relational justice.

vulnerability is amplified by the technical opacity of insurance policies and the rigidity of standard-form provisions.

In the Brazilian legal framework, the 1988 Federal Constitution provides the basis for constraining contractual autonomy, anchored in the principles of human dignity (Art. 1 III) and substantive equality (Article 5, *caput*). In tandem with these constitutional foundations, the Brazilian Civil Code of 2002 (Law No. 10.406/2002) structured objective good faith as a general clause, embedding it in key provisions<sup>10</sup> – most notably Arts. 113, 422, and 765 – which establish it as a governing norm of civil and insurance obligations, operative from the pre-contractual phase through the termination of the legal relationship (Brasil, 2002). Within this architecture, Art. 422 provides that “the contracting parties are bound to observe, both at contract formation and in its execution, the principles of probity and good faith,” thereby imbuing mutual trust and cooperation in contractual and insurance relationships with binding legal efficacy.

Legal scholars have systematized the functions of objective good faith into three complementary dimensions: (i) the interpretive function, which guides the construction of contractual clauses according to standards of fairness and equity; (ii) the integrative function, which supplements normative gaps and imposes ancillary duties of conduct; and (iii) the control function, which restricts the exercise of contractual prerogatives in order to safeguard the counterparty (Venosa, 2010, p. 389). These three functions provide, through deductive logic, the foundations for establishing objective criteria capable of assessing the compliance of contractual clauses – including insurance policy provisions – with the good faith clause.

In effect, each of these three functions yields a distinct prism of behavioural standards: from the integrative function arises the *duty of transparency*, understood as the obligation to provide clear, intelligible, and accessible disclosure of essential contractual and insurance-policy information – particularly in relationships marked by information asymmetry; in turn, the control function underpins the *duty of loyalty*, which demands conduct governed by cooperation, trust, and bona fide intent throughout all stages of the contractual relationship – this normatively enforceable dimension precludes, for example, contradictory, dissimulative, or opportunistic conduct; and, finally, from the interpretative function is derived the *duty of teleological consistency*,

10 Arts. 113, 164, 422, 765–766, 879, 906, 1201–1203, 1214–1219, 1243–1260, 1268, and 1561 of the Brazilian Civil Code (Brasil, 2002) are particularly salient in insurance relationships, underpinning key civil and insurance obligations (Brasil, 2002).



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which requires that contractual clauses – including insurance-policy provisions – be construed in a manner coherent with the goals of economic sustainability, financial viability, and the social function of the contract, with the legitimate expectations generated during negotiation, and with ethical standards of reasonableness (Venosa, 2010, p. 389).

To sum up, the Civil Code and legal scholars converge in endowing objective good faith with the role of supplying deducible normative benchmarks for assessing the substantive compliance of contractual clauses – particularly insurance-policy provisions. Accordingly, deducing good faith's operative dimensions yields three core parameters: (i) *transparency*, (ii) *loyalty*, and (iii) *teleological consistency*. Applying these criteria enables an objective legality assessment of such clauses under the constitutional principles of the social function of contracts and fundamental consumer rights. The next section applies these benchmarks to evaluate whether Article 124 of Law No. 15,040/2024 upholds the requisite duties of conduct and safeguards the rights of vulnerable policyholders.

### 3.2 Critical analysis of legal criteria deriving from Art. 124 of Law No 15.040/2024

In line with the adopted methodology, this concluding phase juxtaposes Article 124's legislative framework with the operative dimensions of objective good faith – transparency, loyalty, and teleological consistency – to assess whether its normative structure aligns with these infra-constitutional benchmarks of the principle and effectively safeguards vulnerable policyholders, particularly within the insurance domain.

#### a) Transparency: Examination of the Clarity and Intelligibility of the Norm

Primarily, it must be assessed whether Article 124 of Law No. 15.040/2024 sufficiently advances the duty of transparency at the insurance relationship's most critical juncture – namely, the transition from long-term policies to insurer-driven non-renewal. Positively, the provision expressly mandates (i) a minimum of 90 days' notice of non-renewal to the policyholder and (ii) delivery of an alternative coverage offer with comparable guarantees and actuarially adjusted premiums while prohibiting waiting periods and pre-existing condition exclusions.



Nonetheless, a closer evaluation reveals that this formal transparency is significantly undermined by the absence of any requirement for individualized, actuarially substantiated justification for non-renewal. By allowing refusals of contractual continuity to rest on an open-ended criterion – “portfolio experience and balance” – without specifying the actuarial, financial, or underwriting metrics that substantiate such decisions, the statute introduces interpretative indeterminacy and invites arbitrary application.

This indeterminacy disproportionately affects senior policyholders, whose ability to comprehend the technical underwriting rationale is typically constrained by the complexity of the underlying actuarial models. Moreover, the lack of any right to disclosure of the actuarial data underpinning non-renewal decisions compromises the policyholder’s right to information and impedes meaningful challenges to opaque non-renewal rationales. As a result, transparency remains a formal feature of Article 124’s architecture rather than a fully realized safeguard – substantive in form but elusive in practice.

### **b) Loyalty: analysis of protection of legitimate expectations**

Secondly, it is imperative to assess whether Article 124 – in its legislative design – safeguards the duty of loyalty expected in long-term insurance relationships, particularly those underpinned by significant legitimate expectations of the policyholder. On its face, Article 124 appears to signal regulatory advancement by expressly prohibiting new waiting periods and pre-existing condition exclusions – mechanisms that have historically burdened policyholders at renewal (Petersen, 2018).

However, this initial perception proves tenuous when measured against the provision’s cumulative – and arguably overly rigid – application criteria. As structured, the statute confines its protective scope to cases satisfying three simultaneous conditions: 1) scope limited to individual life and personal-injury policies; 2) a fixed ten-year tenure threshold of successive automatic renewals; and 3) absence of insurer withdrawal from the market. In particular, the decennial threshold functions as an exclusionary barrier, leaving policyholders unprotected despite sustaining continuous and stable coverage relationships – and subject to involuntary interruptions or modifications in renewal patterns.

This non-dynamic requirement severely undermines the protection of legitimate expectations – especially for elderly and aging policyholders, who frequently



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confront financial or personal instabilities in advanced life stages, as documented by the World Health Organization's 2021 Global Report on Ageism (WHO, 2021). Such obstacles can trigger temporary lapses in automatic renewal – sufficient to exclude these individuals entirely from Article 124's safeguards. Consequently, the statute leads to a direct frustration of the duty of contractual loyalty, authorizing severance of long-standing coverage on the basis of formal criteria that disregard both the policyholder's established relationship history and the trust-based behavior intrinsic to objective good faith.

In sum, although Article 124 ostensibly signals a commitment to policyholder protection, its practical enforcement yields arbitrary exclusions at odds with the cooperative, bona fide behavior that defines contractual loyalty under the principle of objective good faith.

### c) Finalistic consistency: protection of the contract's purposes

Finally, the teleological consistency of the norm must be assessed – that is, whether its concrete application aligns with the social function and economic objectives of the insurance contract, particularly in contexts of informational asymmetry and age-related vulnerability. As demonstrated above, the interpretative function of objective good faith requires that contracts be construed and enforced in accordance with their legitimate aims so as to prevent form from prevailing over substance and to guard against the use of legal technique as a shield for socially unjustifiable practices.

In this light, while Article 124 of Law No. 15.040/2024 exhibits internal coherence and formal logic, it fails to realize its normative purpose of effectively protecting policyholders. Conceived to curb arbitrary non-renewals of long-term policies, in practice, the provision excludes precisely those policyholders most dependent on continuous coverage. The crux of the problem lies in the simultaneous satisfaction of three formal requirements – including successive auto-renewals beyond a fixed ten-year tenure threshold – which ignores the procedural dimension of vulnerability and disregards the variety of coverage trajectories that, although not meeting the statute's rigid parameters, are nonetheless underpinned by ties of trust, dependence, and legitimate expectation of continuity.

Accordingly, this separation between the provision's proclaimed purpose and its concrete effects constitutes a violation of the principle of teleological consistency demanded by objective good faith. By permitting the exclusion of long-standing



policyholders who fail to meet all formal criteria, Article 124 compromises the integrity of the insurance contract and exacerbates contractual inequalities. In this scenario, the social function of the contract – which mandates an interpretation respectful of human dignity and the protection of legitimate interests – is hollowed out in favor of operational inflexibility that serves the insurer’s economic interest at the expense of the policyholder’s protection.

Hence, although Article 124 presents isolated advances, it retains structural flaws, attracting the need for a rigorous, constitutionally aligned interpretation to ensure real protection for elderly consumers and full effectiveness of the principle of objective good faith.

## 4. Conclusion

Building on the identification of institutional ageism in the insurance sector, the overarching aim of this article was to evaluate the constitutional compliance of Article 124 of Law No. 15.040/2024 (Brasil, 2024) with the protection that should be granted to senior policyholders and other vulnerable cohorts. To this end, a dogmatic-analytical methodology was employed, combining scrutiny of ageism in consumer relations with the application of objective good faith’s three operative benchmarks: the duty of transparency, the duty of loyalty, and teleological consistency.

Viewed through the duty of transparency, Article 124 reveals a structural deficiency: it neither mandates individualized, actuarially substantiated justifications accessible to the policyholder nor provides adversarial information-rights procedures to ensure meaningful understanding of non-renewal rationales. The absence of objective, actuarially verifiable metrics for refusal – coupled with the open-ended reference to “portfolio experience and balance” – creates undue discretion for insurers, undermining the legal certainty that underpins contract continuity.

Regarding the duty of loyalty, Article 124 exhibits an internal contradiction. While it expressly prohibits new waiting periods and pre-existing-condition exclusions, it simultaneously conditions its application on rigid, cumulative tenure criteria. In contexts of age-related vulnerability and socioeconomic precariousness, this inflexibility is detrimental to senior policyholders who, despite sustaining long-term coverage relationships with minor lapses, see their legitimate expectations cultivated during the coverage relationship frustrated.



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Finally, with respect to teleological consistency, this analysis indicates that the practical effects of Article 124 of Law No. 15.040/2024 do not cohere with the provision's declared purpose – namely, to guarantee contractual continuity and predictability in long-term insurance relationships. By conditioning protection to the simultaneous satisfaction of formal requirements (duration, policy type, and renewal modality), the statute undermines the social function of the contract and disregards the procedural dimension of vulnerability in aging contexts. The result is the creation of legally neutral formulations that nonetheless reproduce indirect discriminatory effects in conflict with the principles of substantive equality, human dignity, and the prohibition of social regression.

In light of these findings, Article 124 should be interpreted in conformity with the 1988 Brazilian Federal Constitution (Art. 5, *caput*; Art. 1, III) to align its application with the principles protecting vulnerable policyholders. Concretely, its application should be conditional upon a mandatory, detailed, actuarially substantiated justification for any non-renewal; the establishment of adversarial information-rights procedures granting the policyholder meaningful access to the actuarial data underpinning non-renewal decisions; and a flexible interpretation of temporal criteria based on each policy's coverage history and the mutual trust ties established.

Beyond constitutional interpretation, future legislative reforms should incorporate individualized continuity-assessment mechanisms, such as contract review panels with balanced consumer and insurer representation. In addition, mandatory mediation procedures in non-renewal cases provide an accessible forum for reconciling insurer and policyholder interests. Such enhancements would constrain the exclusive deployment of economic criteria at the expense of the insurance contract's protective function and safeguard private autonomy within the constitutional framework of solidarity and contractual justice.

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